

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.4111/2017

Reserved on: 27.11.2017
Pronounced on: 29.11.2017

Hon'ble Mrs. Jasmine Ahmed, Member (J)
Hon'ble Mr. Uday Kumar Varma, Member (A)

Joginder Singh & Ors.

(By Advocate: Sh. Anil Mittal)

Versus

Delhi Transport Corporation

...Respondent

(By Advocate: Ms. Aarti Mahajan)

Order on Interim Relief

By Hon'ble Uday Kumar Varma, Member (A):

The matter came up for hearing on the prayer of interim relief. The interim relief prayed for by the applicants reads as under:-

“Stay the operation of (Annexure A-1) and restrain the respondent from terminating the services of the applicants till the pendency of the present O.A.”

2. The main ground taken by the applicants for seeking the interim relief is that the respondents have already issued two Show Cause Notices [hereinafter referred to as SCNs] in the past to which replies have been submitted by them. However, without taking any decision on those replies, the respondents have issued third SCN to the applicants. The applicants have further contended that the

latest SCNs are not in accordance with the Supreme Court's directions in the case of ***Surender Singh & Ors. vs. Delhi Transport Corporation & Ors.*** [SLP No.11154/2016 decided on 22.11.2016] where the Apex Court has clearly said that '*there shall be an enquiry through medical board whether the employee acquires disability after his employment and if that enquiry is against the employee then whether the employee is responsible for using deceitful means or suppressing his disability for seeking employment*'.

3. The submission of the applicants is that the respondents have not conducted the second enquiry with regard to employees' responsibility, if at all, for using deceitful means or suppressing their disability, and without conducting the enquiry they have issued the impugned SCNs, which mention that in case nothing contrary to the facts mentioned in the SCNs is submitted and the replies are not found satisfactory, appropriate action including the order of termination of service as DTC Driver will be passed. Such a SCN, according to the applicants, is patently illegal.

4. The learned counsel for the respondents submits that large number of drivers are involved in similar cases and

the litigation is going on at various levels, namely, Central Administrative Tribunal, High Court and the Apex Court. These Courts have been issuing directions from time to time, which necessitated issuance of fresh SCNs to the applicants following the Supreme Court's decision in ***Surender Singh & Ors. vs. Delhi Transport Corporation & Ors.*** (supra). Learned counsel further submitted that the respondents had carried out the enquiry with regard to color-blindness of the applicants on the specific issue whether such color-blindness was acquired during the service or before joining the service, and the Medical Board constituted for this purpose has clearly indicated that such color blindness was in existence before the applicants had joined DTC. The respondents plead that as on the date of employment, the applicants were color-blind and, therefore, clearly ineligible for the service, the respondents are legally right in issuing SCNs to them. The respondents have further argued that the wording of the SCNs does not necessarily indicate that the services of the applicants are going to be terminated but mentions the termination of service as one of the possibilities and, therefore, SCNs issued to the applicants cannot be called illegal. The exact wording of the relevant part of the SCNs is as follows:-

“...In case nothing contrary is submitted and reply is not found satisfactory, the appropriate action including the order of termination of services as DTC Driver will be passed.”

Learned counsel for the respondents also drew our attention to paragraph 9 of the Apex Court decision *ibid*, which reads as under:-

“9. We further make it clear that this shall not prevent the DTC from terminating the services of the drivers on the ground that they are found to be color-blind. However, the employee will be entitled for protection of their services under the Act if eligible in law. The appellants shall be treated to have been reinstated for the purposes of the enquiry and shall be entitled to claim consequential benefits at the time of final decision of the enquiry, which shall be completed within a period of six months from the date of receipt of copy of this order.”

5. In the light of the above, the learned counsel for the respondents further contends that the Supreme Court's order does not, in fact, prohibit or prevent the respondents from terminating the services of the drivers on the ground that they had been found color-blind.

6. We have carefully considered the arguments advanced before us. All the arguments placed before us by the applicants actually deal with illegality of the SCNs which, in fact, are more relevant for the final disposal of the OA. The basic ground for seeking interim relief is illegality of the SCNs and it is also the ground for seeking final relief in the

OA. Therefore, *prima facie*, granting of interim relief, in many ways, will amount to deciding the OA finally.

7. One of the important ingredients for granting interim relief is whether not granting interim relief will lead to any irreparable loss to the applicants? Such an argument was not raised by the applicants during the course of hearing. We are of the view that further proceedings following issuance of SCNs to the applicants are not likely to cause any irreparable loss to them. The applicants are free to raise as many issues and objections with regard to legality of SCNs including the arguments emanating from the decision of Apex Court that their services cannot be terminated without holding enquiry whether they were responsible for using deceitful means or suppressing their disability for seeking employment.

8. The directions of the Supreme Court in this regard are binding on the respondents and any violation of these directions will obviously invite contempt of the Apex Court and the respondents need to keep this very clearly in their minds. However, as discussed above, no clear case for grant of interim stay has been made out by the applicants and we are not convinced that non-grant of interim stay will cause any irreparable loss to the applicants.

9. In view of the above discussion, the prayer for interim relief is declined.

10. The respondents are directed to file counter affidavit to the OA within a period of four weeks. Rejoinder, if any, be filed within two weeks thereafter.

11. List the matter before the Principal Registrar's Court for completion of pleadings on 11.01.2018.

(Uday Kumar Varma)
Member (A)

(Jasmine Ahmed)
Member (J)

/Ahuja/